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C O N F I D E N T I A L SECTION 01 OF 02 COLOMBO 001318

SIPDIS

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TAGS: [PGOV](#) [CE](#)

SUBJECT: SRI LANKA: CONTROVERSY OVER END DATE OF  
PRESIDENT'S TERM

REF: A. COLOMBO 1216

[1](#)B. COLOMBO 1160

Classified By: AMBASSADOR JEFFREY J. LUNSTEAD FOR REASONS 1.4(b) and (d)  
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[1](#)1. (U) Summary. Controversy abounds in Sri Lanka about the date President Chandrika Bandaranaike Kumaratunga's term of office ends. While the Constitution allows a single person to hold two six-year terms as president, the document is vague regarding the rules if the incumbent calls for early elections during the first term in office. The President did not wait for her initial six-year term to end before she called for elections in December 1999. She now asserts that she may remain in power twelve years from the date of her initial election, which would set the next Presidential elections in November 2006. However, members of the opposition United National Party (UNP) (and other critics) argue that the President is only entitled to rule six years from the date of her re-election in 1999, which would slate elections for December 2005. Constitutional scholars and politicians are debating in earnest as everyone awaits Elections Commissioner Dayananda Dissanayake's decree, expected mid-August, as to the date of the next presidential election. End summary.

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CONSTITUTIONAL NUANCES AND ENSUING DEBATES  
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[1](#)2. (U) The clause in the Constitution governing the president's term, Article 31, states that a sitting president may call for early elections. The clause goes on to say that if early elections are held, the incumbent's second term in office must begin both after the re-election has been conducted and in correspondence with the month of the first election. If this holds true, President Kumaratunga's second term could not have started before December 1999 (the date of her re-election) and had to start in November (the month corresponding to her first election). By that calculation, her second term began in November 2000, giving her until 2006 to remain in power.

[1](#)3. (C) Nevertheless, legal scholars disagree about when the President's term ends. One major factor giving rise to the current controversy was the President's attempt to overhaul the Constitution in 2000. At that time, she supported a draft Constitution that would have abolished the executive Presidency after the end of her second term. The draft, presented as a bill in Parliament, specifically delineated the beginning of her second term as December 22, 1999. The draft Constitution was vetted by the Supreme Court, which deemed the document legally correct. On July 7, media reports quoted senior UNP official and former head of the University of Colombo Law School G.L. Peiris as saying the Supreme Court's 2000 ruling on the draft Constitution definitively determines that the President's term ends this year, six years from December, 1999. While Peiris publicly supports his party's call for elections this year, he privately admitted to the Ambassador that the current Constitution is vague as to when the President's term actually ends (Reftel A).

[1](#)4. (U) A second factor fueling the debate on this issue is the timing of the President's second oath of office. She took her second oath publicly on December 22, 1999. However, leaked reports to the media in 2003 stated that she took another private oath of office before the Chief Justice of the Supreme Court in November 2000, marking the "true" beginning of her second term. Many commentators have questioned the legality of the so-called "secret oath." They have said the oath was not publicized to the citizens at the time of the swearing-in, no armed services members were present to witness the inauguration of their Commander in Chief, no Cabinet Ministers were present, and the National Emblems and Anthem were not a part of the proceedings. In addition, the oath taking was never published in the government gazette, the nation's legal record.

[1](#)5. (U) The media is rife with speculation as to what Elections Commissioner Dissanayake will say. If he determines that the Presidential election will not occur until 2006, he is not legally required to issue any statement at all in the upcoming months. (Note. With all eyes on him

and high public expectations of clarification, it is likely he will issue his ruling, regardless of its contents. Whatever date Dissanayake sets for the election, a Supreme Court battle will likely ensue as the dissenting party will file a court case challenging the Commissioner's decree. The Chief Justice, widely perceived as the President's close ally, will probably face public demands that he recuse himself from the case. End note.)

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COMMENT AND U.S. POSITION  
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16. (U) UNP members and others cry hypocrisy because the President was willing to end her term in 2005 back in 2000, but has since changed her tune. Critics complain that the rumored "secret oath" is merely a ploy to buy the President another year in office. The UNP is mobilizing its voter base in anticipation of an election this year (Reftel B) while the President and members of her Sri Lanka Freedom Party (SLFP) publicly insist that there will be no presidential election until 2006. Yet on July 28, the SLFP announced in the press that they will nominate current Prime Minister Mahinda Rajapakse as the next presidential candidate. In all, it remains a mystery when the next presidential election will actually take place.

17. (C) While we are not legal scholars, it seems to us that the Constitution is at best ambiguous on this issue, and the President has a plausible argument that her term runs until the end of 2006. Legal experts here confirm that view. From our perspective, this is an argument in which we should not get involved. The US does not have an interest in whether the election is held in 2005 or 2006. This is an issue for Sri Lankans. It is a question of Sri Lanka's constitution, and it should be resolved by Sri Lankans, using their institutions.

18. (C) The US does have an interest, however, in seeing that the controversy over the election date does not distract attention from the peace process, or worse yet, harm the peace process. To a certain extent, distraction is inevitable. We will continue to urge members of both parties to keep their eyes on the prize and to focus on peace even when they skirmish politically. The election debate could harm the peace process-- and the overall cause of democracy in Sri Lanka-- if it deteriorates into an extra-Constitutional conflict.

LUNSTEAD